30.11.2016

Notice u/s 6 (2) of the Competition Act, 2002 jointly given by Petrol Complex Pte Ltd. and Kesani Enterprises Co Ltd.

CORAM:

Mr. S.L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U.C. Nahta
Member

Mr. G. P. Mittal
Member

Legal Representatives of the parties: For Petrol Complex Pte Ltd: M/s Vinod Dhall- TT&A.;
For Kesani Enterprises Co Ltd.: M/s J Sagar Associates

Order under Section 31(1) of the Competition Act, 2002

1. On 18.10.2016, the Competition Commission of India (hereinafter referred to as the **"Commission"**) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (**"Act"**) jointly given by Petrol Complex Pte Ltd. ("**Rosneft SPV**"); and Kesani Enterprises Co Ltd. ("**JVCo**").

2. The proposed combination involves acquisition of a minimum of 49% (and a maximum of 50% less one share) shareholding in Essar Oil Limited ("**EOL**"/ "**Target**") by Rosneft SPV ("**Rosneft transaction**"); and acquisition of another minimum of 49% (and a maximum of 50% plus one share) shareholding in EOL by JVCo ("**JVCo Transaction**"). For the purpose of the proposed combination, a Share Purchase Agreement dated 15.10.2016 has been executed *inter-alia* between Rosneft SPV, Essar Energy Holdings Limited ("**Essar Energy**") and Oil Bidco (Mauritius) Limited ("**Oil Bidco**") (Essar Energy and Oil Bidco are together referred to as "**Sellers")** ("**Rosneft SPA**"); and another Share Purchase Agreement dated 15.10.2016 has been executed *inter-alia* between JVCo and the Sellers ("**JVCo SPA**") (Hereinafter Rosneft SPV and JVCo are together referred to as the "**Acquirers**"; the Acquirers, the Target and the Sellers are collectively referred to as the "**Parties**"). As per the terms of Rosneft SPA and JVCo SPA, it has been agreed that the exploration and production business (including the coal bed methane ("**CBM**") assets) of EOL is excluded from the scope of the proposed combination. Further, it has been agreed between the Parties that EOL will acquire shareholdings in the following companies belonging to Essar Group ("**Essar Group Restructuring**"):
    i. Prior to closing, a minimum of 76% and up to 100% of the entire issued share capital of Vadinar Oil Terminal Limited (excluding its shareholding in Essar Vizag Terminal Limited);
    ii. Prior to closing, 73.99% equity shares and all preference shares of Vadinar Power Company Limited (the remaining 26.01% shareholding is already held by EOL); and
    iii. Within 12 months after closing, 49% of the equity shares of Vadinar Liquid Terminals Limited.

    Apart from the aforesaid arrangements, the Parties have also entered into certain related agreements. (Rosneft Transaction, JVCo Transaction, Essar Group Restructuring and related agreements together constitute "**Proposed Combination**").

3. Rosneft SPV, a special purpose vehicle, incorporated in Singapore, is a wholly owned indirect subsidiary of PJSC Roseneft Oil Company ("**Rosneft**"). It is currently not engaged in any business. Rosneft is primarily engaged in the exploration and production of crude oil and natural gas, as well as the production and marketing of refined products, including several petrochemical products. As submitted, Rosneft does not directly have any business activities or physical

presence in India. Further, none of Rosneft's subsidiaries (except Bashneft which has made sales of certain petrochemical products) have any business activity or physical presence in India.

4. EOL, belonging to Essar group, is a subsidiary of Essar Energy. EOL is a fully integrated oil and gas company with presence mainly in refining and marketing of oil refined products, production of CBM and retail supply of petroleum products.

5. JVCo, incorporated in Cyprus, is a special purpose vehicle and is indirectly wholly owned by Tendril ventures Pte Ltd ("**Tendril**"). Tendril is also a special purpose vehicle jointly owned by Trafigura Pte Ltd. ("**Trafigura**") (49%), UCP PE Investments Ltd. ("**UCP**") (49%), Essar Africa Power Holdings Limited ("**EAPL**") (2%). As submitted, JVCo is currently not engaged in any business activity in India or globally.

6. Trafigura, incorporated in Singapore is a wholly owned subsidiary of Trafigura Group Pte. Ltd. ("**Trafigura Group**") and is a leading global commodity trading firm. Trafigura Group sources, stores, transports, trades and delivers a range of raw materials (including oil and refined products and non-ferrous metals, iron ore and coal) to clients around the world. In India, its activities include physical trading of crude oil and condensates, naphtha, liquid natural gas, refined metals etc. It also procures commodities such as refined products (naphtha, gasoline, aviation fuel, gasoil and bitumen) from third parties in India which it, then, trades globally.

7. UCP, based in Russia, is a private investment group specializing in investments in fast moving consumer goods, retail financial infrastructure and services, internet technologies, oil and gas and petrochemicals etc. As submitted, UCP and its portfolio companies do not have any sales or presence in India.

8. EAPL, an entity incorporated in Mauritius, will indirectly own 2% shareholding in JVCo. A submitted, EAPL is not currently engaged in any business activity in India or globally.

9. Considering the business activities of EOL, Commission examined the competition impact of the Proposed Combination in the following product segments:
    i. Exploration, Production and sale of CBM and crude oil

ii. Wholesale and retail sale of refined products
iii. Other activities of EOL – Power plant and ports and terminals

Exploration, Production and sale of CBM and crude oil

10. As stated above, the exploration and production business (including the CBM assets) of EOL is excluded from the scope of Proposed Combination and hence, the Proposed Combination has no impact on competition dynamics of this product segment.

Wholesale and retail sale of refined products

11. Trafigura is involved in trading of crude oil (and condensates) and naphtha in India. EOL is involved in production of refined products (including naphtha) but it did not make any sale of naphtha in India for the year 2015-16 and naphtha manufactured by EOL was exported in entirety. Thus, there is no existing horizontal overlap between the Parties in the broader segment of refined products and in narrower possible markets for each refined product in India. With respect to the potential overlap between Trafigura and EOL in the refined products, the Commission observed that their presence in any refined product market is not significant to raise any competition concerns and post-combination, the resulting entity would continue to face competitive constraints from other significant competitors. Since, the Proposed Combination is not likely to cause an appreciable adverse effect on competition in the market for each refined product taken separately or in the overall market for refined products, the exact delineation of the relevant market has been left open.

Other activities of EOL – Power plant and ports and terminals

12. With regard to port and terminal activities, the Commission observed that the port and terminal assets are for captive purpose and are used exclusively for the EOL refinery. These assets are not market facing and therefore, do not present any competition concern.

13. As regards vertical relationships between the Acquirers and Target, Commission noted that the Parties have proposed to enter into Off-take and Supply Agreements, pursuant to which Rosneft

and Trafigura may supply crude oil to EOL, and EOL may supply refined products to Rosneft and Trafigura. In this regard, the Commission observed that the presence of the Parties in both the upstream market of crude oil and downstream market of refined products is not significant to raise any competition concerns in India.

14. Considering facts on record and details provided in the notice given under sub-section (2) of section 6 of the Act and assessment of the Proposed Combination on the basis of factors stated in sub-section (4) of section 20 of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have appreciable adverse effect on competition in India and therefore, the Commission approved the same under sub-section (1) of section 31 of the Act.

15. This order shall stand revoked if, at any time, the information provided by the Acquirers is found to be incorrect.

16. The information provided by the Acquirers is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.

17. The Secretary is directed to communicate to the Acquirers accordingly.